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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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DVL, INC. and DVL KEARNY  
HOLDINGS, LLC,

Plaintiffs,

v.

CONGOLEUM CORPORATION and  
BATH IRON WORKS CORPORATION,

Defendants.

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Civil Action No. 17-4261 (KM) (JBC)

**DECLARATION OF RALPH J.  
MARRA IN SUPPORT OF BATH  
IRON WORKS CORPORATION'S  
MOTION FOR LEAVE TO FILE  
MOTION TO STRIKE EXPERT  
AND EXTEND TIME TO  
RESPOND PENDING OUTCOME  
OF MOTION TO STRIKE**

RALPH J. MARRA, of full age, hereby declares as follows:

1. I am an attorney-at-law of the State of New Jersey and senior counsel in the firm of Calcagni & Kanefsky, LLP. Our firm is counsel of record for Defendant Bath Iron Works Corporation ("BIW") in the above-captioned matter.

2. I submit this declaration in support of BIW's Motion For Leave to File Motion to Strike Congoleum Corporation's ("Congoleum") Expert David Bronner and to Extend Time to Respond Pending Outcome of Motion to Strike.

3. Attached hereto as Exhibit 1 is a true copy of a Congoleum's Expert Report of David Bronner, dated February 24, 2020.

4. Attached hereto as Exhibit 2 is a true and correct copy of a trial transcript excerpt from *United States v. Collins* (Collins Trial 1), No. 07 CR 1170 (S.D.N.Y.), dated June 16, 2009.

5. Attached hereto as Exhibit 3 is a true and correct copy of a trial transcript excerpt from *United States v. Collins* (Collins Trial 2), No. 07 CR 1170, Dkt. No. 218 (S.D.N.Y. November 5, 2012).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

/s/ Ralph J. Marra  
RALPH J. MARRA

Dated: April 3, 2020

# **EXHIBIT 1**



























































































# **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 07 CR 1170

5 JOSEPH P. COLLINS,  
6 Defendant.

7 -----x

8 June 16, 2009  
9 9:30 a.m.

10 Before:

11 HON. ROBERT P. PATTERSON,

12 District Judge

13  
14 APPEARANCES

15 LEV L. DASSIN  
16 Acting United States Attorney for the  
17 Southern District of New York  
18 BY: CHRISTOPHER GARCIA  
19 NICHOLAS S. GOLDIN  
20 Assistant United States Attorneys

21 COOLEY GODWARD KRONISH LLP  
22 Attorneys for Defendant  
23 BY: WILLIAM J. SCHWARTZ  
24 JONATHAN P. BACH  
25 DANIEL M. HIBSHOOSH  
REED A. SMITH

1 (Trial resumed)

2 (In open court; jury not present).

3 THE COURT: I have considered the papers on what was  
4 said yesterday and the papers on the issue of the expert  
5 witness that the defense wants to call.

6 In the first place, it seems to me from my reading of  
7 the record that Judge Sand stated that he was disinclined to  
8 permit the expert testimony, but my review confirms that  
9 conclusion.

10 The government has indicated that it is not going to  
11 argue that Mr. Collins deviated from general practices of  
12 corporate transactional lawyers, and the subject of the  
13 expert's proposed testimony does not appear to me to be really  
14 relevant to the critical issues in this case; and the charge of  
15 the Court that is being proposed covers those issues, which  
16 pertain to the role of attorneys in a case such as this.

17 It seems to me that the offering of such testimony is  
18 apt to confuse the jury as to what the issues in the case are  
19 and confuse the issues and may mislead them as to what the  
20 issues are. Under those circumstances, I am going to rule  
21 under 403 that the testimony should be excluded.

22 I haven't got -- I guess I do have Rule 403. I am not  
23 used to the bench here. I think, as Rule 403 says, evidence  
24 may be excluded if its probative value is substantially  
25 outweighed by the danger of unfair prejudice, confusion of the

1 issues or misleading the jury, or by consideration of undue  
2 delay and waste of time or needless presentation of cumulative  
3 evidence.

4 I am ruling under the substantially outweighed by the  
5 danger of unfair prejudice and confusion of issues or  
6 misleading the jury and not on the second consideration.  
7 Although it would take time, I did not take that into  
8 consideration in my determination.

9 MR. SCHWARTZ: Your Honor, I am not going to argue. I  
10 just ask that the letter that contained the expert notice that  
11 the Court reviewed --

12 THE COURT: Yes. Let me make a record of those  
13 documents that I reviewed.

14 MR. SCHWARTZ: Yes.

15 Thank you very much, your Honor.

16 THE COURT: The June 11, 2009 letter to Mr. Garcia and  
17 Mr. Goldin from the Cooley firm, Mr. Koral; the government's  
18 letter of May 8, 2009; the government's motion to exclude the  
19 defendant's proffered expert testimony and motion to admit  
20 testimony of certain government fact witnesses, that's dated  
21 April 27; and defendant Joseph Collins' opposition to the  
22 government's motion to exclude expert testimony dated May 15,  
23 2009.

24 I think that covers the documents that were relevant  
25 to the motion. Am I correct?

1 MR. GOLDIN: From the government, yes.

2 MR. SCHWARTZ: I think so, your Honor. Yes.

3 THE COURT: So I'm right, aren't I? I couldn't hear  
4 the answer?

5 MR. SCHWARTZ: Yes.

6 The important thing for us, your Honor, was that the  
7 last letter be made a part of the record, and I think your  
8 Honor just did that.

9 THE COURT: OK.

10 Is there anything else to take up?

11 MR. BACH: Judge, a very minor point. I think  
12 yesterday the Court suggested to the jury that the trial would  
13 end this week. There is also a significant possibility that it  
14 won't.

15 THE COURT: All right. We will deal with that today.

16 We will find out today, I hope, and I will take the  
17 blame as being new on the job if it's going to go longer.

18 MR. BACH: Thank you, Judge.

19 THE COURT: All right.

20 MR. GARCIA: Your Honor, the government handed to  
21 Judge Sand's clerk a letter for the Court's consideration  
22 relating to the role-of-attorneys instruction. I just wanted  
23 to make the Court aware that we submitted that.

24 THE COURT: I haven't seen it.

25 MR. GARCIA: I gave it to Mr. Chopra.



1 THE COURT: Our chambers do not adjoin.

2 THE LAW CLERK: Judge, I believe this is it.

3 THE COURT: OK. I will have to look at these, and  
4 I'll take them up in connection with the charge.

5 MR. GARCIA: Yes, your Honor. That makes sense.

6 THE COURT: I hope to have a charge for you. When do  
7 we think now?

8 THE LAW CLERK: Midday.

9 THE COURT: I went over Judge Sand's draft, and I have  
10 made changes in it, not significant changes. I think they were  
11 just some things, articulation that I thought ought to be  
12 clarified in some cases, but there's no real change in the  
13 substance of the charge. It is just a matter of making certain  
14 things clear.

15 For instance, I didn't think that it was clear that  
16 the overt acts have to be -- that the object of the conspiracy  
17 found when you consider the first element had to be the same  
18 object that the defendant participated in and that the overt  
19 act had to be in furtherance of the same object that you found  
20 with respect to the conspiracy and with respect to the  
21 defendant's participation.

22 I think that has to be, at least it's my practice to  
23 make that as clear as possible, because I think as drafted in  
24 some other charges that I have seen that it is not as clear as  
25 it should be. That is the sort of change that I made in going

1 over it, but I am sure you will have requests and suggestions  
2 all the same. I just do it at more length than some judges do,  
3 I think. I have not ever been before any of the present judges  
4 on the court. It is a little hard to say. But from what I  
5 have seen of the charges, I think that's the case.

6 MR. SCHWARTZ: Your Honor, with respect to the  
7 charging conference, which I know the Court is intending to  
8 have today, we received the draft fairly late last night, and I  
9 am not sure we're going to have time to fully review it.

10 THE COURT: Do you think that we could blackline any  
11 part of the changes that I made?

12 MR. SCHWARTZ: We have never seen --

13 THE COURT: I have gone through the charge, but not  
14 completely through the charge.

15 MR. SCHWARTZ: We have never seen Judge Sand's draft  
16 so the blackline --

17 THE COURT: What you got was his draft basically. I  
18 made changes in the beginning because of the unique situation.  
19 I couldn't say that I, for instance, observed the jury  
20 throughout the trial and noted how diligent they have been in  
21 performing their duties. So I had to change language of that  
22 sort and make it clear that it wasn't in the singular. It had  
23 to be adapted in those ways.

24 I did that earlier, but I only got partially through  
25 the substantive charges, and I didn't give those to the clerks.

1 So you've got basically his draft.

2 MR. SCHWARTZ: The only thing I am asking, your Honor,  
3 is, given the fact that we have really not had time to review  
4 it in detail, and I don't know about the government, whether it  
5 makes sense to postpone the conference for a day to give us the  
6 opportunity to review the charge so that we have substantive  
7 comments about it.

8 THE COURT: I would like to get your ideas. I really  
9 am open minded on charges because I know the lawyers think the  
10 jury really follows the charge. I am not sure they do, but  
11 nevertheless I do think so, and I think it's particularly hard  
12 when you have a charge as long as this to be assured that they  
13 follow the charge.

14 MR. GARCIA: Your Honor, for the government's part, we  
15 are prepared whenever the Court is inclined to proceed.

16 THE COURT: I really think we should have it tonight,  
17 but I would like to hear your thoughts. I don't know, I  
18 haven't had you before me, but I have had Mr. Garcia in one  
19 case and Mr. Goldin on another case, and I think they have sat  
20 through longer charging conferences than they do in some other  
21 courts.

22 MR. SCHWARTZ: Your Honor, I appreciate the desire to  
23 have our comments, and we would like to give them. The only  
24 question is, given the hour at which we received the draft  
25 charge and given the fact that we are now all in court for the

1 rest of the day, it may be hard for us to have substantive  
2 comments.

3 THE COURT: We are going to blackline what you  
4 received last night to assist you. I have trouble with  
5 last-minute changes.

6 I have one problem, and that is that my wife has  
7 Alzheimer's and I am the night nurse; so I can't say here until  
8 10:00, 11:00 at night because I don't have people to take care  
9 of her on a regular basis. So I have to think of their  
10 schedule as well as your schedules.

11 If we do it Tuesday, and maybe we will have to have  
12 another charging conference, I don't know, but I hope to  
13 incorporate whatever changes that are correct that you request.

14 Anything else to take up?

15 MR. GARCIA: Nothing from the government, your Honor.

16 THE COURT: I see Mr. Greenfield is in the back of the  
17 courtroom. I think he had to sit through -- I don't know that  
18 he had to sit through a long charging conference.

19 MR. GREENFIELD: I was there with Mr. Garcia.

20 THE COURT: That's right. You were on the other side  
21 from Mr. Garcia.

22 MR. GARCIA: Hello, Mr. Greenfield.

23 THE COURT: All right.

24 (Recess)

25 MR. GARCIA: Your Honor?

1 THE COURT: Yes.

2 MR. GARCIA: The government was asked to hand up a  
3 letter to you from the Wilmer Hale firm. The second witness  
4 the government is going to call this morning, his name is  
5 George Stephanakis, he is a lawyer and partner with the law  
6 firm of Cravath Swain & Moore. As the letter that I handed up  
7 indicates, he was a lawyer affiliated with banks that were part  
8 of an underwriting syndicate in connection with offerings by  
9 Refco.

10 Ms. Martin, Ms. Laurie Martin, a partner at the Wilmer  
11 Hale firm, who is standing there dressed in white, is present  
12 today to assert the privilege if necessary.

13 The government fully anticipates that we will not even  
14 approach anything of the nature of privileged communications on  
15 direct examination, and I don't imagine that they will come up  
16 on cross. But in the event that such privilege needs to be  
17 asserted, Ms. Martin wanted to make her presence known.

18 MS. MARTIN: Thank you.

19 THE COURT: All right. Thank you.

20 Bring in the jury.

21 (Jury present)

22 (Continued on next page)

23 EARL MELAMED, resumed.  
24  
25

# **EXHIBIT 3**

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Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

07 Cr. 1170 (LAP)

5 JOSEPH P. COLLINS,

6 Defendant.

7 -----x

November 5, 2012  
10:03 a.m.

8 Before:

9 HON. LORETTA A. PRESKA,

10 District Judge

11 APPEARANCES

12 PREET BHARARA

13 United States Attorney for the  
14 Southern District of New York

BY: HARRY A. CHERNOFF

MICHAEL A. LEVY

15 EDWARD A. IMPERATORE

Assistant United States Attorneys

16 COOLEY LLP

17 Attorneys for Defendant

BY: WILLIAM SCHWARTZ

18 JONATHAN BACH

LAUREN GERBER LEE

19 - also present -

20 Robert Clark,

21 Postal Inspectors, U.S. Postal Inspection Service

22 Gary Smith,

23 Paralegal, U.S. Attorney's Office

1 materiality. As we went forward, the testimony that was  
2 permitted was testimony from, as Mr. Levy said, the buyer, as  
3 to what was important to a buyer. And although I think I  
4 recall that Mr. Schoen might be a lawyer, he wasn't testifying  
5 as such. He was testifying as the head business guy for the  
6 buyer.

7 The other pieces of testimony that might be considered  
8 to fall in this category were the individuals who testified  
9 that they said to Mr. Collins that the PPA had to be disclosed.  
10 Accordingly, neither side -- and I will note also that the  
11 government asked to put in additional, what they said was lay  
12 testimony, but to the same effect, that the PPA should have  
13 been disclosed, that it was material and the like, and that  
14 evidence did not come in.

15 At this point, in my view, such expert testimony would  
16 be intruding into the jury's realm. The question of whether or  
17 not the PPA was important or material certainly is something  
18 within the jurors' ken because they have Mr. Schoen's  
19 testimony, and they will have the instructions on the law. My  
20 fear about expert testimony on this point is that it will be  
21 essentially putting in an additional summation and will not be  
22 helpful to the jury on this point. These matters are not that  
23 complicated, and the jury is certainly able to make its way  
24 through these matters.

25 With respect to the other portions of testimony that



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1 were proffered on behalf of the defense by Mr. Bronner, again,  
2 these did not seem to me to be issues that were beyond the  
3 jury's ken. And, moreover, I felt it would be unduly confusing  
4 to the jury and intrude into their sphere. As pointed out  
5 earlier, the -- whether or not the PPA or something like it was  
6 important to the buyers is something that could have been  
7 cross-examined through Mr. Schoen. The meaning of the contract  
8 is not so difficult.

9 With respect to lawyers' practices, again, this is not  
10 something that is beyond the jury. The fact that multiple  
11 lawyers in a law firm are working on multiple Refco matters is  
12 something any juror can understand. The fact that the billing  
13 lawyer for the client might not read each and every line of  
14 material is something easy to understand. They don't need  
15 another lawyer to tell them about it.

16 I also note that Mr. Bronner really isn't this kind of  
17 lawyer. He is a corporate lawyer, but I don't think he has an  
18 expertise in private equity. Also, much of the general  
19 practice of lawyers is not at all controversial and, again,  
20 it's something that's not really in dispute and we don't need  
21 expert testimony about.

22 MR. SCHWARTZ: Your Honor, just for the record, I will  
23 say that Mr. Bronner is a mergers and acquisitions lawyer, who  
24 I understand has had a great deal of experience in dealing with  
25 transactions involving private equity.

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1 THE COURT: All right. There were various other items  
2 that were proffered in Mr. Bronner's testimony. I can go  
3 through them if you want, but I thought that the gist of the  
4 proffer was materiality and practices in general with corporate  
5 lawyers. Is there anything else in particular you want to deal  
6 with?

7 MR. SCHWARTZ: Your Honor, I think the proffer speaks  
8 for itself.

9 THE COURT: All right. To the extent that Mr. Bronner  
10 was going to testify that outside transactional lawyers often  
11 have only partial knowledge of the client's business  
12 transactions, financial conditions and the like, seems to me we  
13 don't need testimony about that because, at the end of the day,  
14 the government has the burden of proving Mr. Collins'  
15 knowledge.

16 To the extent Mr. Bronner was going to testify that an  
17 outside transactional lawyer relies primarily on the client for  
18 information about the client and the business, again, this is  
19 not really relevant here. The government has the burden of  
20 proof, and the question is what information Mr. Collins did  
21 receive, could have learned or could have intuited from the  
22 individuals with whom he dealt.

23 To the extent that Mr. Bronner was going to testify  
24 that an outside transactional lawyer does not investigate the  
25 client unless specifically asked to, again, if we're talking

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1 about a formal investigation, sure, but again, the government  
2 has the burden of proof of what Mr. Collins knew or was privy  
3 to.

4 To the extent that Mr. Bronner was going to testify  
5 that an outside transactional lawyer would assume that audited  
6 financial statements fairly represent the financial condition  
7 of the company in all material respects is, first, not  
8 particularly controversial, but, second, not particularly  
9 relevant here because, again, government has the burden of  
10 proving what Mr. Collins knew.

11 Similarly, to the extent that Mr. Bronner would have  
12 testified that an outside transactional lawyer would not  
13 necessarily receive copies of all documents executed by the  
14 client in connection with the transaction, and first of all,  
15 this is hardly the basis for scientific or expert testimony,  
16 but again, the government has the burden of showing what  
17 Mr. Collins did or did not receive.

18 To the extent Mr. Bronner would have testified that  
19 the senior partner is not expected to have detailed knowledge  
20 of all documents, communications and disclosures related to the  
21 deal, again, this is irrelevant. The government has the burden  
22 of proof here.

23 To the extent Mr. Bronner would have testified that  
24 individual members of a deal team may not have knowledge of all  
25 elements of the deal or all deal documents, again, this is not

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1 particularly subject to expert testimony. The government has  
2 the burden of proof, and perhaps more importantly here, there's  
3 no dispute that Mr. Collins had knowledge of the PPA.

4 To the extent that Mr. Bronner was going to testify  
5 that it was not unusual for a senior attorney, at a client's  
6 request, to limit other attorneys access to certain information  
7 about the client or the transaction, I'm not sure how that  
8 lends itself to expert testimony. And, here, it is undisputed  
9 that the PPA was not disclosed to other members of the Mayer  
10 Brown deal team. The motive is what the issue is, and that  
11 certainly is not subject to expert testimony.

12 MR. SCHWARTZ: Your Honor, just --

13 THE COURT: Mr. Schwartz?

14 MR. SCHWARTZ: I'm not sure it's undisputed. I think  
15 Mr. Collins' testimony that we just heard was that he did not  
16 remember.

17 THE COURT: Okay. Then there's no contrary evidence.

18 MR. SCHWARTZ: There is evidence from Angela Lang,  
19 that was an e-mail that referenced Mr. Collins, that said "I'll  
20 call you about this issue."

21 THE COURT: Right, and that's the one that caused the  
22 reaction.

23 MR. SCHWARTZ: Mr. Collins writes to Mr. Bennett, and  
24 he also writes to Angela Lang.

25 THE COURT: Yeah, "I'll call you when I get back from



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1 clients, we don't need an expert to tell us that. So on  
2 balance, I do not believe we need expert testimony or that it  
3 would be helpful to the jury, but more importantly, I believe  
4 it would intrude into the fact-finding sphere of the jury, be  
5 confusing, and amount to a second summation. And, thus,  
6 Mr. Bronner's testimony is precluded.

7 What else, gents?

8 MR. SCHWARTZ: Your Honor, thank you for giving us the  
9 time now. The only thing, which maybe I should talk to the  
10 government about and we can do it at another point, is just a  
11 couple of record cleanup points before the record is closed.

12 THE COURT: Okay. You people work it out. Whatever  
13 it is, it is.

14 MR. CHERNOFF: Your Honor, I'm just thinking about the  
15 time, and I'm wondering if the voir dire of Miss Cassidy would  
16 exceed even her direct examination. I think it will. If the  
17 defense has other read backs that they'll be doing and  
18 Miss Cassidy is the only remaining witness, the jury will be  
19 going home early no matter what, it seems we should do the voir  
20 dire after they leave.

21 THE COURT: Is that all right? How much of read back  
22 do you have?

23 MR. SCHWARTZ: We have two fairly short witnesses,  
24 your Honor.

25 MR. CHERNOFF: There's a live witness, your Honor.